

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1063 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHANCHIBEN VALJIBHAI MOTIBHAI

Versus

STATE OF GUJARAT

Appearance:

MRS SHEILA M THAKORE for appellant.

MR S.A.PANDYA, APP for Respondent.

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/06/98

C.A.V. JUDGEMENT

1. In this criminal appeal the appellant herein/ original accused has brought in challenge the judgment and order dated 27.9.1994 recorded by the Additional Sessions Judge, Panchmahals at Godhra, in Sessions Case No. 107 of 1992, whereby the appellant was convicted for the offence under Section 304 Part II of the Indian Penal Code for committing murder of her husband and ordered to suffer rigorous imprisonment for five years and to pay a

fine of Rs.500/-, and in default, to undergo simple imprisonment for further two months.

2. The prosecution case, in a nut-shell, is as under:

(i) The appellant is the wife of the victim, Valjibhai Motibhai, and at the relevant time both were residing at Bhudpagla village of Devgadh Baria Taluka in Panchmahals District. On 26.1.1992, at about 10 A.M. the appellant was preparing food for the victim- her husband. As the food was not prepared in time, a quarrel took place between both of them, there was hot exchange of words and the appellant got excited. All of a sudden, the accused/ appellant took out an axe, gave a blow on the head and face of the victim- the husband of the appellant- and immediately she ran away. This incident took place in the presence of two children of the accused and the victim.

(ii) After the incident, FIR was lodged. At the end of the investigation, charge-sheet was submitted against the accused for the offence punishable under Section 302 of the Indian Penal Code and accused/ appellant was put on trial.

(iii) At the end of the trial, the learned Additional Sessions Judge, Panchmahals at Godhra, after considering the evidence of the star and child witness Narvat, who is the son of the accused/ appellant and the victim, has recorded the finding of conviction under Section 304 Part II of the Indian Penal Code and she was awarded the sentence, as aforesaid. This finding is on the anvil before this Court.

3. Mrs. Thakore, learned advocate appeared on behalf of the accused/ appellant, whereas, Mr. Pandya, A.P.P. appeared for the prosecution-State.

4. According to the appellant, the learned trial Judge has not appreciated the evidence in proper perspective. Out of two eye witnesses the prosecution has examined only one witness and that too, a child witness, who, at the relevant time, was not present at the scene of the occurrence as he had gone to school for attending flag hoisting ceremony, and, therefore, no reliance could have been placed upon the sole testimony of the witness. Under the circumstances, according to the accused/ appellant, the conviction based upon the sole testimony of the child witness suffers from grave infirmity which requires to be corrected by this Court.

5. As against this, learned A.P.P. Mr. Pandya supported the judgment through out and submitted that there is no infirmity in the judgment and order passed by the trial Judge recording conviction. The child witness on whose sole testimony reliance was placed happened to be the son not only of the victim but of the accused/appellant also and he has no axe to grind and to speak lie against his own mother and there cannot be enmity on the part of the child who was aged about 5 years only at the relevant time. The learned Trial Judge has after verifying significance of the oath, without administering oath to the child, recorded his evidence and cautiously weighed the evidence of the child witness and, therefore, the judgment and order recording conviction does not suffer from any infirmity which requires the interference of this Court.

6. I have gone through the entire evidence and the judgment of the lower court. I find no error committed by the learned trial Judge so far as the appreciation of the evidence of the child witness is concerned. The incident took place in day light at about 10 A.M. The flag hoisting ceremony was over at about 9 A.M. and the presence of the eye witness at the place of occurrence was very natural and he has no axe to grind and speak lie against his own mother. It has also come in the evidence that the incident has taken place in spur of moment. Initially there was hot exchange of words. The accused suddenly got excited and took out the axe and gave a blow to the victim. Before appreciating the evidence of the child witness, the learned trial Judge has also taken care as envisaged under section 118 of the Indian Evidence Act. On scanning the evidence it has also divulged that the witness Narvat came back after the flag hoisting ceremony was over and he was sitting in his house. His mother, the accused, was preparing food while his father, the victim, was taking rest. At that time his father demanded food immediately. The accused told that food was not ready and thereafter quarrel started between his father and mother. There was hot exchange of words between both of them and the appellant/accused got excited and took out the axe and gave a blow to the victim and immediately thereafter she ran away. The incident took place in spur of moment and the presence of the witness at the scene of offence is also natural. Further more he has no axe to grind and speak lie against his own mother. Therefore, according to me, the learned trial Judge has very rightly appreciated the evidence of the child witness by weighing it in proper perspective. Though two persons had witnessed the incident that does

not mean that the prosecution has to examine both the witnesses and it cannot be contended that conviction cannot be based upon the sole testimony of one witness. In catena of decisions the Apex Court has held that if the evidence of the sole witness is trustworthy and without any infirmity, conviction can be based upon the testimony of the sole witness.

7. Under these circumstances, this Court is of the opinion that the judgment and conviction recorded by the trial Court under Section 304 Part II of the Indian Penal Code against the accused/appellant is justified and does not require any interference by this Court.

8. Now the next question is with respect to the quantum of sentence. Learned advocate Mrs. Thakore has vehemently submitted that the trial Judge has awarded sentence of five years which is unduly harsh and excessive which requires to be reduced at the hands of this Court. Further more, she has also submitted that so far as the offence under Section 304 Part II of IPC is concerned, the sentence prescribed is imprisonment of either description for a term which may extend to ten years, or with fine, or with both. Therefore, benefit under the provisions of Probation of Offenders Act can be given to the accused/appellant by putting her under observation instead of awarding the sentence at once and this is a fit case to accord the benefit under the Probation of Offenders Act as the accused/appellant has six children. Alternatively, she has also submitted that the appellant has already undergone sentence of about four years and sentence of only one year remains. Therefore, if this Court comes to the conclusion that the benefit of Probation of Offenders Act cannot be given to the accused/appellant, in that case, the sentence can be suitably reduced upto the period of imprisonment already undergone.

9. After giving my anxious thought to the rival contentions, I am of the opinion that the present incident has taken place in the year 1992. The conviction was recorded on 27.9.1994. The accused is in jail for about four years. It is also evident that she has six children and the present incident took place on a sudden quarrel followed by hot exchange of words. There are catena of decisions of the Apex Court for reducing sentence imposed on the accused who is punished under Section 304 Part II of the IPC. Therefore, I am of the opinion that the sentence in this case can be suitably reduced to the period of imprisonment already undergone and the imposition of fine can be set aside and,

according to me, this would meet the ends of justice.

10. In the premise, this appeal is partly allowed. The judgment and order recording conviction is confirmed. However, the sentence imposed by the learned trial Judge is reduced and instead of that, in the facts and circumstances of the case, it is ordered that the sentence already undergone by the accused/appellant shall be treated as sufficient sentence . The fine imposed on the accused/appellant is set aside. The appellant is ordered to be set at liberty forthwith, if not required in connection with any other case.
